A

OXBRIDGE HEIGHT SDN BHD

v.

AZIZAN MOHAMMAD ALI & ANOR

B

HIGH COURT MALAYA, JOHOR BAHRU
GUNALAN MUNIANDY JC
[JUDICIAL REVIEWS NO: 25-117-12-2012, 25-112, 122, 123, 125, 130, 134, 135, 137, 140-12-2012, 25-2, 7, 8, 9-01-2013 & 17-02-2013]

C

19 SEPTEMBER 2013

ADMINISTRATIVE LAW: *Judicial review - Certiorari - Application to quash decision of Tribunal for Homebuyers Claims - Whether Tribunal acted within jurisdiction - Whether only relevant facts and circumstances*

D

considered - Whether award by Tribunal based purely on undisputed facts - Whether error of law, illegality, irrationality or procedural impropriety shown - Housing Development (Control and Licensing) Regulations 1989, reg. 11

E

LAND LAW: *Delivery of vacant possession - Late delivery of - Award of liquidated ascertained damages by Tribunal for Homebuyers Claims - Whether settlement agreement between developer and homebuyers valid and enforceable - Whether parties bound by terms of sale and purchase agreement without any modification or waiver - Whether Tribunal acted within jurisdiction - Housing Development (Control and Licensing)*

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Regulations 1989, reg. 11

The application for judicial review for an order of *certiorari* arose out of the decision of the Tribunal for Homebuyers Claims ('Tribunal') to make an award of liquidated ascertained damages

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('LAD') to the respondents/homebuyers. The respondents were purchasers of a residential unit in the housing project undertaken by the applicant, a licensed housing developer. The parties entered into a sale and purchase agreement ('SPA') in the statutory form which stipulated that the delivery of vacant possession shall be

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within 24 months after execution of the SPA. The applicant, although not disputing the late delivery in breach of the stipulated period, contended that LAD should not be awarded and in deciding to do so, the Tribunal had acted unreasonably or irrationally and the award should be quashed. The applicant

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further submitted that pursuant to a Settlement Agreement ('SA'), the respondents had agreed to accept full and final settlement of

the late delivery charges and to further grant an extension of time for the applicant to complete the construction of the project and therefore the respondents were estopped from denying/challenging the authenticity as well as the existence of the SA by virtue of s. 10 of the Contracts Act 1950 ('CA'). A

B

Held (dismissing application):

(1) Regulation 11 of the Housing Development (Control and Licensing) Regulations 1989 ('HDR') governs every contract for the sale and purchase of a housing accommodation which must be in the prescribed form as per Schedule G. Any waiver or modification of the provisions of the statutory contract of sale can only be made by the Controller under reg. 11(3) of the HDR. There is no provision in the Housing Development (Control and Licensing) Act 1966 ('HDA') or HDR for any supplemental agreement to waive or modify the SPA. (para 4) C D

(2) HDA is a specific legislation enacted by the Legislature to protect the rights and interests of housebuyers in their dealings with developers. It must therefore take precedence over s. 10 of the CA. As the SA did not comply with reg. 11(1) of the HDR, it was null and void and was thus, unenforceable. Both parties were bound by the terms of the SPA without any modification or waiver as recognised under the law. To permit the SA to take effect over the statutory SPA would be to allow the parties to contract out of statute which would render it unlawful and invalid. The right of the respondents to claim for LAD under the SPA, therefore, remained intact and was not taken away by the SA. (para 5) E F

(3) The Tribunal had all the relevant, undisputed facts of the respondents' claim for late delivery. The claim was simply based on the formula for assessment of compensation under the SPA and the date of delivery of vacant possession to the respondents by the applicant. If the primary facts pertaining to the claim were clear and sufficient, there would be no error of law on the part of the Tribunal if its decision was based on the facts. (para 9) G H

(4) It was not part of the duty of the Tribunal to ascertain the nature and kind of financing obtained by the homebuyer. There was nothing on record showing that the respondents had executed an absolute assignment with their financiers. I

Hence, the issue of lack of *locus standi* on the part of the respondents to lodge the claim did not arise in the absence of evidence that they had executed the said absolute assignment. (para 12)

(5) The Tribunal had ruled that Schedule A of the SPA did not provide for waiver or exemption and that the unforeseen/unforeseeable circumstances were not a ground to exempt the housing developer from delivering vacant possession within the statutorily prescribed time period contained in the SPA. Reliance on this ground would be permissible only if a certificate is obtained from the Controller under reg. 11(3) of the HDR which confers the power and discretion on the Controller to waive or modify the provisions of the Schedule G SPA. In view of the specific provision in reg. 11, the Tribunal had not erred in holding that the applicant could not rely on the ground for non-compliance with the SPA without having obtained the relevant certificate in writing from the Controller for waiver or modification. (paras 13 & 15)

(6) The duty to pay LAD on the part of the developer to the purchaser for late delivery is both contractual and statutory. There is no provision either in the contract or the Regulations for the developer to be exempted from liability by reason of public interest. The terms of the contract agreed upon and binding on both parties, have to be construed based strictly on established principles. The ground of public interest, therefore, to deny the rightful claim of the respondents as agreed upon had no merits and the granting of the award did not constitute an instance of irrationality. (para 16)

(7) The right of a housebuyer to LAD for late delivery is in accordance with the provisions of the SPA. The function of the Tribunal is to decide whether the housebuyer's claim for LAD has been established under the terms of the SPA. The entitlement to LAD cannot be subject to the disposal of other proceedings involving the developer. The financial standing of the developer was also an irrelevant consideration in deciding whether LAD should be granted. Hence, the applicant had failed to show any error of law on the part of the Tribunal in refusing to grant the aforesaid stay of proceedings. (paras 17 & 18)

(8) The applicant had not shown any error of law on the part of the Tribunal in awarding LAD to the respondents. The Tribunal had acted within its jurisdiction under the Housing Development (Homebuyers Claims Tribunal) Regulations 2002. It had taken into account only relevant facts and circumstances pertaining to the respondents' claim under the SPA and the liability of the applicant as developer for late delivery of vacant possession. The award was based purely on the undisputed facts and not on any irrelevant considerations. The grounds relied upon by the applicant did not amount to any error of law or to any illegality, irrationality or procedural impropriety. (para 21)

Case(s) referred to:

Araprop Development Sdn Bhd v. Leong Chee Kong & Anor [2008] 1 CLJ 135 CA ***(refd)***

Associated Provincial Picture Houses Ltd v. Wednesbury Corp [1948] 1 KB 223 ***(refd)***

Hariram Jayaram & Ors v. Sentul Raya Sdn Bhd [2002] 4 CLJ 796 HC ***(refd)***

Max-Benefit Sdn Bhd v. Phuah Thean An & Anor [2001] 2 CLJ 70 HC ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Phileoallied Bank (Malaysia) Bhd v. Bupinder Singh Avatar Singh & Anor [2002] 2 CLJ 621 FC ***(refd)***

Telekom Malaysia Bhd v. Tribunal Tuntutan Pengguna & Anor [2007] 1 CLJ 300 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, ss. 10, 57(2)

Housing Development (Control and Licensing) Act 1966, s. 22C

Housing Development (Control and Licensing) Regulations 1989, reg. 11(1), (3)

Housing Development (Tribunal For Homebuyer Claims) Regulations 2002, reg. 24

Other source(s) referred to:

De Smith, Woolf and Jowell, *Judicial Review of Administrative Action*, 5th edn, 1995, pp. 282-283

For the applicant - Y K Tee (Y C Wong with him); M/s Sheng Lee Law Office

For the respondents - In person

(Case No: 25-2 & 9-01-2013)

For the respondents - Wan Nornazifah Wan Mansor; M/s Roslinda Wan Nornazifah & Co

(Case No: 25-112-12-2012)
For the respondent - Sharizal Kusin; M/s Ermiey Nizam & Ho

[Editor's note: The application herein was a test case binding on 10 other related judicial review applications as per the applications number.]

Reported by S Barathi

JUDGMENT

Gunalan Muniandy JC:

[1] This application for judicial review for an order of *certiorari* to be issued arises out of the decision of the tribunal for homebuyers claims ("the tribunal") to make an award of liquidated ascertained damages ("LAD") to the respondents/homebuyers. The applicant was a licensed housing developer while the respondents were purchasers of a residential unit in the housing project undertaken by the applicant. The parties had entered into a sale and purchase agreement ("SPA") in the statutory form which stipulates that delivery of vacant possession by the developer to the purchaser shall be within 24 months after execution of the SPA. Late delivery in breach of the stipulated period was not disputed by the applicant. Nevertheless, the applicant contended that in the circumstances of this case LAD should not have been awarded and that, the tribunal had in deciding to do so acted unreasonably or irrationally. As such, that the tribunal's award should be quashed by an order of *certiorari*. It was agreed that this application would be a test case binding on ten other related judicial review applications as listed above.

The Law On Judicial Review

[2] The principles governing the issue of *certiorari* in the exercise of the powers of judicial review of administrative action are well summarised in the case of *Telekom Malaysia Bhd v. Tribunal Tuntutan Pengguna & Anor* [2007] 1 CLJ 300 where Low Hop Bing J (as he then was) held:

> Governing Principles
>
> [12] At this juncture, it is appropriate for me to set out the principles governing the grounds for sustaining a substantive notice of motion to challenge a decision-making process by way of *certiorari*, as follows:

(1) It is neither an appeal nor a review of the decision itself, but a review of the decision-making process of the tribunal to see if there are errors of law on the face of the record;

(2) It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed;

and an error may be disclosed if the decision-maker eg:

(a) asks himself the wrong question;

(b) takes into account irrelevant considerations;

(c) omits to take into account certain relevant considerations (an Anisminic error);

(d) misconstrues the terms of the relevant statute; or

(e) misapplies or misstates a principle of general law.

(per Gopal Sri Ram JCA in *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union* [1995] 2 CLJ 748 at p 765 f-g CA);

(3) In process or substance, an impugned decision is flawed on ground of;

(a) illegality, meaning that the decision must be based on law and the decision-maker must understand directly the law that regulates his decision-making power and must give effect to it, and whether he has or not is par excellence a justiciable question;

(b) irrationality meaning "*Wednesbury* unreasonableness", so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it, as enunciated in *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223;

(c) procedural impropriety covering failure:

(i) to observe basic rules of natural justice;

(ii) to act with procedural fairness;

(iii) to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice; and

A (4) possibly, proportionality.

(per Edgar Joseph Jr. FCJ in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 at pp 172b - 173b; referring to the judgment of Lord Diplock in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* B [1985] AC 374.)

(See my judgment in *Lim Siew Hong v. Contraves Advances Devices Sdn Bhd & Anor* [2006] 2 AMR 770 at pp 773-775).

C **Analysis Of Grounds For Judicial Review**

[3] The main ground raised in this application is that both parties by free consent entered into a settlement agreement ("SA") after a series of negotiations and discussions on the terms thereof. The respondents had *inter alia* by virtue of the SA agreed to D accept full and final settlement of the late delivery charges that they were entitled to and to further grant an extension of time for the applicant to complete construction of the relevant project. The applicant submitted that by reason thereof the respondents are estopped from denying/challenging the authenticity as well as the E existence of the SA by virtue of s. 10 of the Contracts Act, 1950 ("CA"). Further, that the non-compliance with the terms of the SA by the respondents in claiming for LAD constituted a breach of contract which the tribunal had failed to consider in allowing the claim.

F **[4]** The issue raised by the respondents was whether the SA was valid and enforceable under Housing Development (Control and Licensing) Act 1966 ("HDA") and Housing Development (Control and Licensing) Regulations, 1989 ("HDR")? The crux of G the respondents' contention was that the SA was invalid and unenforceable because it was in effect contracting out of statute by reason of being in conflict with the HDR and HDA. The principal agreement in this case is the SPA made under the HDA and the HDR. Regulation 11 of the HDR governs every contract H for the sale and purchase of a housing accommodation which must be in the prescribed form as per schedule G. Any waiver or modification of the provisions of the statutory contract of sale can only be made by the controller under reg. 11(3) of the HDR. There is no provision in the HDA or HDR for any supplemental I agreement to waive or modify the SPA. (See *Hariram Jayaram & Ors v. Sentul Raya Sdn Bhd* [2002] 4 CLJ 796).

[5] As the HDA is a specific legislation enacted by the legislature to protect the rights and interests of housebuyers in their dealings with developers, it must take precedence over s. 10 of the CA. Its provisions and those of the regulations made thereunder must be strictly complied with to reflect the intention of the legislature. In the circumstances, I held that as the SA did not comply with reg. 11(1) of the HDR it was null and void and thus, unenforceable. Both parties were bound by the terms of the SPA without any modification or waiver as recognised under the law. I upheld the contention of the respondents that to permit the SA to take effect over the statutory SPA would be to allow the parties to contract out of statute which would render it unlawful and invalid. The right of the respondents to claim for LAD under the SPA, therefore, remained intact and was not taken away by the SA.

[6] The applicant then contended that the tribunal erred in law and procedure in deciding against the applicant although the respondents had not filed submissions or replies to the applicant's defence. Further, that the tribunal made its decision without hearing evidence from the respondents. This was contended to be in contravention of reg. 24 of the Housing Development (Tribunal For Homebuyer Claims) Regulations 2002. Regulation 24 reads:

> 24. Hearing
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> (1) At the hearing before the Tribunal, the claimant shall be entitled to adduce evidence, call any witness or produce any document, record or thing in support of his case.
>
> (2) After the claimant has presented his case, the respondent shall present his case and may adduce evidence, call any witness or produce any document, record or thing in support of his case.
>
> (3) After the claimant and respondent have closed their respective cases, a brief oral or written submission may be made by the respondent and thereafter by the claimant.
>
> (4) The President may at any time assist the parties in conducting their cases.
>
> (5) An award made under this regulation shall be in Form 10.

[7] The above seems to suggest that there was no evidence of relevant and primary facts on which the respondents' claim was based. It is called the "no evidence rule" which amounts to an error of law. According to De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* (5th edn. 1995) at pp. 282-283:

> A tribunal which has made a findings of primary fact wholly unsupported by evidence, or which has drawn an inference wholly unsupported by any of the primary facts found by it, will be held to have erred in point of law.

[8] The rule was explained by MP Jain, *Administrative Law of Malaysia and Singapore* (3rd edn. 1997) as follows:

> If there is some evidence to support a finding of fact, it is not then for the courts to go into the sufficiency or adequacy of the evidence. It is not the court's function to review, reassess, reappreciate, reappraise evidence, or draw its own inferences as to facts from the evidence. The court will not interfere merely because it may come to different conclusions on fact on the basis of the same evidence. (at page 715).

[9] In this case the tribunal had all the relevant, undisputed facts of the respondents' claim for late delivery. The claim was simply based on the formula for assessment of compensation under the SPA and the date of delivery of vacant possession to the respondents by the applicant. Not hearing the respondents or having the benefit of their submissions would, if at all, be prejudicial to the respondents and not to the applicant. If the primary facts pertaining to the claim are clear and sufficient, there would no error of law on the part of the tribunal if its decision is based on these facts.

[10] Thirdly, it was contended that the tribunal had failed to ensure whether the respondents had any housing loan facility from a financial institution and if so, whether he had executed a 'deed of absolute assignment' with the financier. It was submitted that this was in conflict with s. 22C of the HDA which reads:

> 22C Notwithstanding anything contained in any written law or any rule of law, agreement, assignment or charge lawfully entered into between a homebuyer as defined in section 16A and his financier, a homebuyer shall be entitled on his own volition and in his own name to initiate, commence, institute and maintain in any court or tribunal any action, suit or proceeding against a housing developer or any other person in respect of any matter arising out of the

> sale and purchase agreement entered into between the homebuyer and the housing developer provided the homebuyer's financier under a deed of absolute assignment is notified in writing either before or within fourteen days after the action, suit or proceeding against the housing developer has been filed before any court or tribunal.

[11] This failure by the tribunal was contended to be an instance of illegality. If the respondents had executed a 'deed of absolute assignment' it was mandatory for them to give the necessary notification in writing to their financier under s. 22C of the HDA. It was argued that without this fact being ascertained, the award of the tribunal was illegal because the respondents did not have the *locus standi* to lodge the claim in the first place. Whether or not a deed of assignment is an absolute assignment would depend on the terms of the agreement. Reference was made to the Court of Appeal case of *Araprop Development Sdn Bhd v. Leong Chee Kong & Anor* [2008] 1 CLJ 135 which ruled that '... Whether or not a deed of assignment is an absolute assignment ... is to be determined from the four corners of the agreement itself (See Federal Court case of *Phileoallied Bank (Malaysia) Bhd v. Bupinder Singh Avatar Singh & Anor* [2002] 2 CLJ 621) ... .

[12] The short answer to the above contention would be that it is no part of the duty of the tribunal to ascertain the nature and kind of financing obtained by the homebuyer. There was nothing on record showing that the respondents had executed an absolute assignment with their financiers. It was not for the tribunal, which had to determine the issue of breach of contractual and statutory obligations by the developer/applicant, to search the record in order to determine whether the claimant who had obtained financing had in fact executed an absolute assignment in favour of his financiers. Hence, in my view, the issue of lack of *locus standi* on the part of the respondents to lodge the claim did not arise in the absence of evidence that they had executed the said absolute assignment. It has generally been accepted that an assignment to secure a housing loan from a financial institution is an assignment by way of charge only and not an absolute assignment even though this latter phrase is used in the agreement. In *Max-Benefit Sdn Bhd v. Phuah Thean An & Anor* [2001] 2 CLJ 70 KC Vohrah J (as he then was) held:

> Although the assignment is stated to be absolute in effect, it is not. The assignment was purely for the purpose of securing the loan. What I have adverted to show is that there was a loan

A which the assignors-purchasers had taken from the bank and that the loan had to be repaid over a period of time and that the rights and the loan will be repaid. The loan or any balance or part of it was given upon the security of the same property.

B The implication is that the assignment of the equitable chose in action would come to an end, it would revert back to the assignors on one of the two events taking place, whichever comes earlier. The first event is where the loan is fully paid. The second event is where the developer has obtained the legal title to the property and the property is then transferred to the assignors-
C purchasers with the consent of the assignee bank ...

There was no absolute assignment in this case. I therefore hold the purchasers as plaintiffs have *locus standi* to sue the developer - defendant.

D **[13]** Fourthly, that before making the award of LAD, the tribunal had failed to take into account unforeseen circumstances encountered or faced by the applicant for its failure to deliver vacant possession of the premises in accordance with the SPA. In essence, this ground was raised as an instance of irrationality or
E "*Wednesbury* unreasonableness" as propounded in the case of *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223. The tribunal had ruled that schedule A of the SPA did not provide for waiver or exemption due to this factor. It was contended that this ruling was in total disregard of the law of
F contract as clearly spelt out in s. 57(2) of the Contracts Act 1950. The aforesaid circumstances included increase in cost of building and transportation, heavy rain/flood, theft of electric cables and pending civil suits between the applicant and other parties. The tribunal President decided that unforeseen/unforeseeable
G circumstances were not a ground to exempt the housing developer from delivering vacant possession within the statutorily prescribed time period contained in the SPA. Reliance on this ground would be permissible only if a certificate is obtained from the controller under reg. 11(3) of the HDR 1989 which confers the power and
H discretion on the controller to waive or modify the provisions of the schedule G SPA, reg. 11(3) states:

(3) Where the Controller is satisfied that owing to special circumstances or hardship or necessity compliance with any of the provisions in the contract of sale is impracticable or unnecessary,
I he may, by a certificate in writing, waive or modify such provisions:

> Provided that no such waiver or modification shall be approved if such application is made after the expiry of the time stipulated for the handing over of vacant possession under the contract of sale or after the validity of an extension of time, if any, granted by the controller.

[14] This view finds support in the judgment of Abdul Malik Ishak J (as he then was) in *Hariram Jayaram & Ors v. Sentul Raya Sdn Bhd (supra)* where it was held:

> Thus, it would be apparent that under reg. 11(3) of the Housing Regulations that where the Controller of Housing is satisfied, upon the developer's application, that owing to some special circumstances or hardship, it is impracticable for the developer to strictly comply with certain express provisions of the standard sale and purchase agreement then the Controller of Housing will issue a certificate in writing waiving or modifying such provisions. In the present case, it was certainly open to the defendant as the developer to apply to the Controller of Housing to waive or modify the delivery date but, alas, the defendant developer made no attempt to do so. Perhaps the defendant developer knew that any application to waive or modify such provisions made after the expiry of the time stipulated for the handing over of vacant possession shall not be approved by the Controller of Housing.

[15] In view of the specific provision as per reg. 11 above providing an avenue to the housing developer to raise the issue of special circumstances or hardship, the tribunal President had not erred in holding that the applicant could not rely on this ground for non-compliance with the SPA without having obtained the relevant certificate in writing from the controller for waiver or modification.

[16] Fifthly, that the tribunal had failed to take into consideration the elements of public policy and public interest in that the interests of the other housebuyers would be seriously jeopardised by the award of LAD to the respondents. In this respect the tribunal was said to have, without reasons, failed to heed the advice of the National Housing Department to the other housebuyers to allow the applicant to complete the project satisfactorily before making any LAD claims. Similarly, a petition by the housebuyers, representative had been ignored without reasons being given. By allowing LAD to the respondents, it was contended that the effect would be that purchasers who had yet to receive their houses would possibly be deprived of their houses

due to the financial impact on the applicant. Suffice to say that the duty to pay LAD on the part of the developer to the purchaser for late delivery is both contractual and statutory. There is no provision either in the contract or the regulations for the developer to be exempted from liability by reason of public interest. The terms of the contract agreed upon and binding on both parties, have to be construed strictly based on established principles. The ground of public interest, therefore, to deny the rightful claim of the respondents as agreed upon had no merits. The granting of the award did not constitute an instance of irrationality by the tribunal.

[17] It was next contended that the tribunal had wrongfully refused to grant a stay of proceedings pending the disposal of other judicial review applications at the Johor Bahru High Court involving the same or similar projects, agreements and claims. It has to be stressed that the right of a housebuyer to LAD for late delivery is in accordance with the provisions of the SPA. The function of the tribunal is to decide whether the housebuyer's claim for LAD had been established under the terms of the SPA. The entitlement to LAD cannot be subject to the disposal of other proceedings involving the developer. Applicant had failed to show any error of law on the part of the tribunal in refusing to grant the aforesaid stay of proceedings.

[18] Another ground raised by the applicant was that the tribunal had failed to take into account the financial difficulties faced by the applicant and other companies under the renewed group. The financial status of the applicant was affected, amongst others, due to its dispute with the Johor Bahru City Council which resulted in a civil suit being filed at the JBHC that was pending disposal. It was argued that this factor should have been considered for the delay in the delivery of vacant possession. Suffice to say that the housebuyer is entitled to LAD as of right upon breach of the SPA by the developer. The right to the award doesn't depend on the financial standing of the developer or the disposal of pending civil suits that the developer has filed. In short, the financial standing of the developer is an irrelevant consideration in deciding whether LAD should be granted and was rightly rejected by the tribunal.

Conclusion

[19] In judicial review applications, the court is concerned with the decision-making process rather than the decision itself on its merits.

[20] In *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135, Raja Azlan Shah Ag CJ Malaya (as His Royal Highness then was) referred to the case of *Associated Provincial Picture House Ltd v. Wednesbury Corp (supra)* which held:

> The power of the court to interfere in each case is not that of an appellate authority to override a decision of the local authority, but is that of a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in it.

[21] It is trite law that the grant of an order of *certiorari* is discretionary under the three broad headings of illegality, irrationality or procedural impropriety. On the grounds discussed above, I held that the applicant had not shown any error of law on the part of the tribunal in awarding LAD to the respondents. The tribunal had acted within its jurisdiction under the Housing Development (Tribunal For Homebuyers Claims) Regulations 2002. It had taken into account only relevant facts and circumstances pertaining to the respondents, claim under the SPA and the liability of the applicant as developer for late delivery of vacant possession. The award was based purely on the undisputed facts and not on any irrelevant considerations. The grounds relied upon by the applicant did not amount to any error of law or to any illegality, irrationality or procedural impropriety by the tribunal. In conclusion, I held that the applicant had not satisfied the onus of showing valid grounds to quash the decision of the tribunal. I, accordingly, dismissed this application with costs.